

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

NOEL ALEJANDRO ALCAREZ-GUERRERO,  
*Petitioner.*

No. 2 CA-CR 2019-0278-PR  
Filed June 18, 2020

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Petition for Review from the Superior Court in Cochise County  
No. CR200500144  
The Honorable Terry Bannon, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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Noel Alcaez-Guerrero, Buckeye  
*In Propria Persona*

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

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S T A R I N G, Presiding Judge:

¶1 Petitioner Noel Alcaez-Guerrero seeks review of the trial court’s ruling denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that ruling unless the court has abused its discretion. *See State v. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Alcaez-Guerrero has not met his burden of establishing such abuse here.

¶2 After a jury trial, Alcaez-Guerrero was convicted of first-degree murder, kidnapping, and three counts of aggravated assault. The trial court sentenced him to natural life for the murder conviction, to be served concurrently with a six-year term and a 7.5-year term for two of the aggravated assault counts. It ordered that a five-year term for kidnapping and a one-year term for the third aggravated assault would be served concurrently to one another but consecutively to the other sentences. This court affirmed Alcaez-Guerrero’s convictions and sentences on appeal. *State v. Alcaez-Guerrero*, No. 2 CA-CR 2006-0115 (Ariz. App. Aug. 16, 2007) (mem. decision). Alcaez-Guerrero twice sought and was denied post-conviction relief, and this court denied relief on review. *State v. Alcaez-Guerrero*, No. 2 CA-CR 2016-0265-PR (Ariz. App. Oct. 11, 2016) (mem. decision); *State v. Alcaez-Guerrero*, No. 2 CA-CR 2009-0010-PR (Ariz. App. June 15, 2009) (mem. decision).

¶3 In March 2019, Alcaez-Guerrero filed a notice of and petition for post-conviction relief. In his notice, he requested the appointment of counsel and asserted a claim under Rule 32.1(g), arguing that *Montgomery*

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<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

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*v. Louisiana*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 718 (2016), constituted a significant change in the law, and suggesting that he had been sentenced under “an unconstitutional statute.” In his petition, he again cited Rule 32.1(g) and maintained he had been sentenced under former A.R.S. § 13-604, which “violates the Arizona Constitution.” He reasoned that article IV, § 13 of the Arizona Constitution limits statutes to “one subject,” but § 13-604, which has been repealed,<sup>2</sup> addressed both repetitive and dangerous offenders.<sup>3</sup> He seemingly relied on *Montgomery* for the proposition that his sentences based on § 13-604 are “illegal” and “cannot stand.”

¶4 The trial court appointed counsel, who subsequently filed a notice stating that she had reviewed the record but had “been unable to find a colorable claim to raise.” Counsel also asked the court to treat Alcaez-Guerrero’s petition filed in March 2019 as his pro se petition in this proceeding. The court granted that request and then dismissed Alcaez-Guerrero’s petition. It reasoned that *Montgomery* did not apply to Alcaez-Guerrero, who was an adult at the time he committed his offenses, because it was limited to situations involving “mandatory life sentences without the possibility of parole for juvenile offenders.” The court further concluded that former § 13-604 did not violate the Arizona Constitution because the word “subject” in article IV, § 13 is afforded a “broad and extended meaning” and the sentencing schemes for repetitive and dangerous offenders “are logically connected.” This petition for review followed.

¶5 On review, Alcaez-Guerrero reasserts his claims that the U.S. Supreme Court’s decision in *Montgomery* applies to his case and that former § 13-604 violates the “one subject” provision of the Arizona Constitution. However, we cannot say the trial court abused its discretion in rejecting these claims based on their merits, as described above. The court clearly identified Alcaez-Guerrero’s arguments and resolved them correctly in a thorough, well-reasoned analysis. We therefore adopt that analysis. See *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993) (when trial court has correctly ruled on issues “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

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<sup>2</sup>2008 Ariz. Sess. Laws, ch. 301, § 15.

<sup>3</sup> As relevant here, article IV, § 13 of the Arizona Constitution provides: “Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title.”

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Additionally, we note that, although Alcarez-Guerrero framed his § 13-604 argument as a Rule 32.1(g) claim, it seems more appropriately considered under Rule 32.1(a), and, as such, it is untimely. *See* Ariz. R. Crim. P. 32.4(b)(3)(A).

¶6 Alcarez-Guerrero also argues that his trial counsel was ineffective for failing to object to the use of former § 13-604 at sentencing. Because he did not clearly raise this argument below,<sup>4</sup> and the trial court did not consider it, we could decline to address it on review. *See* Ariz. R. Crim. P. 32.16(c)(2)(B) (petition for review must contain issues decided by trial court that defendant is presenting for review); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (court of appeals does not address issues raised for first time in petition for review). Even assuming the argument were raised below, however, it is precluded in this successive proceeding. *See* Ariz. R. Crim. P. 32.2(a)(3); *see also State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010) (claim of ineffective assistance of counsel falls under Rule 32.1(a)).

¶7 Accordingly, although we grant the petition for review, we deny relief.

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<sup>4</sup>Although Alcarez-Guerrero indicated in his notice that he was raising a claim of ineffective assistance of counsel, he offered sparse argument on that claim in his petition. *See* Ariz. R. Crim. P. 32.7(b) (discussing requirements for petition for post-conviction relief).